

1 WO

2 NOT FOR PUBLICATION

3

4

5

6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8

9 Glenn Anderson,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

15 No. CV-15-08306-PCT-JJT

16

17

18

19

20

21

22

23

24

25

26

27

28

ORDER

At issue is the denial of Plaintiff Glenn Anderson's Application for Supplemental Security Income ("SSI") by the Social Security Administration ("SSA") under the Social Security Act ("the Act"). Plaintiff filed a Complaint (Doc. 1) with this Court seeking judicial review of that denial, and the Court now addresses Plaintiff's Opening Brief (Doc. 12, "Pl.'s Br."), Defendant Social Security Administration Commissioner's Opposition (Doc. 16, "Def.'s Br."), and Plaintiff's Reply (Doc. 17, "Reply"). The Court has reviewed the briefs and Administrative Record (Doc. 11, R.) and now affirms the Administrative Law Judge's decision (R. at 31-40) as upheld by the Appeals Council (R. at 1-4).

I. BACKGROUND

Plaintiff filed an application for SSI on December 20, 2011, for a period of disability beginning March 1, 2005. (R. at 339-42.) Plaintiff's claim was denied initially on September 20, 2012 (R. at 267-69), and on reconsideration on May 9, 2013 (R. at 237). Plaintiff then testified at a hearing held before an Administrative Law Judge

1 (“ALJ”) on February 11, 2014, at which Plaintiff asked to change his disability onset date
2 to January 4, 2012. (R. at 48-88.) On May 2, 2014, the ALJ denied Plaintiff’s SSI
3 application. (R. at 31-40.) On October 26, 2015, the Appeals Council upheld the ALJ’s
4 decision. (R. at 1-4.) The present appeal followed.

5 The Court has reviewed the voluminous medical evidence in its entirety and finds
6 it unnecessary to provide a complete summary here. The pertinent medical evidence will
7 be discussed in addressing the issues raised by the parties. In short, upon considering the
8 medical records and opinions, the ALJ found that Plaintiff has severe impairments that
9 include an adjustment disorder with depressed mood; polysubstance dependence; a
10 history of major depressive disorder, bipolar disorder, catatonic schizophrenia, and a
11 schizoid personality disorder; status post open reduction internal fixation of a left forearm
12 fracture; left ankle fracture; left radius and ulna fracture; multilevel degenerative disc
13 disease with mild stenosis; cervical spondylosis; ulnar nerve and peripheral neuropathy;
14 radiculopathy; lumbago; sciatica; wrist osteopenia; central hernia; and left knee medial
15 meniscus tear. (R. at 33.)

16 **II. LEGAL STANDARD**

17 In determining whether to reverse an ALJ’s decision, the district court reviews
18 only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236
19 F.3d 503, 517 n.13 (9th Cir. 2001). The court may set aside the Commissioner’s
20 disability determination only if the determination is not supported by substantial evidence
21 or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial
22 evidence is more than a scintilla, but less than a preponderance; it is relevant evidence
23 that a reasonable person might accept as adequate to support a conclusion considering the
24 record as a whole. *Id.* To determine whether substantial evidence supports a decision, the
25 court must consider the record as a whole and may not affirm simply by isolating a
26 “specific quantum of supporting evidence.” *Id.* As a general rule, “[w]here the evidence
27 is susceptible to more than one rational interpretation, one of which supports the ALJ’s
28

1 decision, the ALJ's conclusion must be upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954
 2 (9th Cir. 2002) (citations omitted).

3 To determine whether a claimant is disabled for purposes of the Act, the ALJ
 4 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
 5 proof on the first four steps, but the burden shifts to the Commissioner at step five.
 6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ
 7 determines whether the claimant is presently engaging in substantial gainful activity.
 8 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.*
 9 At step two, the ALJ determines whether the claimant has a "severe" medically
 10 determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the
 11 claimant is not disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether
 12 the claimant's impairment or combination of impairments meets or medically equals an
 13 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R.
 14 § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be disabled. *Id.* If not,
 15 the ALJ proceeds to step four. *Id.* At step four, the ALJ assesses the claimant's residual
 16 functional capacity ("RFC") and determines whether the claimant is still capable of
 17 performing past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not
 18 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,
 19 where he determines whether the claimant can perform any other work in the national
 20 economy based on the claimant's RFC, age, education, and work experience. 20 C.F.R.
 21 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is disabled.
 22 *Id.*

23 **III. ANALYSIS**

24 In this case, Plaintiff generally does not contest the ALJ's consideration and
 25 weighing of Plaintiff's treatment records and hearing testimony. Instead, Plaintiff asserts
 26 that the ALJ made a number of technical errors by (1) improperly concluding Plaintiff's
 27 past relevant work included hand packager; (2) improperly concluding Plaintiff could
 28 work as a hand packager; (3) failing to find Plaintiff met the requirements under Listing

1 12.03 for psychotic disorders; and (4) failing to find Plaintiff met the criteria for the
2 application of Medical-Vocational Rule 201.14. (Pl.'s Br. at 18-23.)

3 **A. Plaintiff's Residual Functional Capacity**

4 At step four of the disability evaluation process, an ALJ must determine if the
5 plaintiff has the RFC to perform past relevant work, either as the plaintiff performed it or
6 as it is generally performed in the national economy. *See* 20 C.F.R. § 404.1520(a)(4)(iv).
7 Plaintiff argues that the ALJ erred by finding that the job of hand packager was past
8 relevant work because Plaintiff did not engage in that work long enough to learn the job.
9 (Pl.'s Br. at 18-19.) Furthermore, Plaintiff argues, even if the job of hand packager was
10 appropriate for the ALJ to consider, the Vocational Expert (VE) erred in concluding that
11 Plaintiff has the RFC to work as a hand packager because that job requires constant
12 handling and fingering, which Plaintiff does not have the ability to do. (Pl.'s Br. at 19-
13 20.)

14 Even if the ALJ erred in concluding that the job of hand packager was past
15 relevant work, any error was harmless. At the hearing, the ALJ presented the VE with the
16 hypothetical of

17 an individual approaching advanced age with a limited education . . . and
18 with the same work experience as [Plaintiff] who can perform a full range
19 of light [work] with the following limitations. He can carry 20 pounds
20 occasionally; 10 pounds frequently; stand, walk, and sit six hours of an
21 eight-hour day; occasional balancing, stooping, kneeling, crouching, crawling;
22 never climbing ladders, ropes, or scaffolds. Or never climbing
23 period. Frequent reaching, handling, and fingering; avoid working with
24 heights and machinery; and with the following non-exertional limitations.
25 Can perform simple instructions; no fast-paced work; no intense
26 concentration for more than one hour without a five-minute break and
focus; and occasional interaction with co-workers, supervisors, and the
public. [Would] this person be able to perform his past relevant work either
as actually performed, or as those occupations, again, are performed in the
national economy?

27 (R. at 83-84.) The VE responded that the individual could work in the hand packaging
28 job as Plaintiff had performed it, which, as Plaintiff previously reported, required a

1 minimal amount of handling and fingering and did not require him to lift more than ten
2 pounds. (R. at 84, 370.) Moreover, the VE testified that the individual could perform
3 other light, unskilled jobs in the national economy, including inspector, bench assembler,
4 and cleaner/housekeeper. (R. at 84-85.) The VE's assessment did not change when the
5 ALJ added the condition that the individual may be absent or off task five percent of the
6 time. (R. at 85.) Finally, on the condition that the individual may be absent or off task ten
7 percent of the time, the VE reported that the individual could work as a
8 cleaner/housekeeper or as a mail clerk. (R. at 85.)

9 With the exception of the ALJ's minimization of Plaintiff's alleged psychiatric
10 conditions, which the Court addresses below, Plaintiff does not challenge the RFC the
11 ALJ applied to Plaintiff in the hypotheticals he presented to the VE or argue that the RFC
12 determination was not supported by substantial evidence in the record. Even if the Court
13 concluded that the ALJ erred in relying on Plaintiff's previous job of hand packager as a
14 baseline for his analysis, the RFC used was supported by substantial evidence, and the
15 VE concluded that work in the national economy exists for an individual with Plaintiff's
16 RFC and other characteristics. As a result, any error on the part of the ALJ was harmless.
17 *See Tommasetti v. Astrue*, 533 F.3d 1035, 1038, 1042-43 (9th Cir. 2008) (noting that the
18 Court need not remand or reverse an ALJ's decision if it is clear from the record that the
19 error is "inconsequential to the ultimate nondisability determination").

20 **B. Listing 12.03**

21 Plaintiff next argues that the ALJ erred at step three of the disability evaluation
22 process by failing to conclude that the objective medical and other findings satisfied the
23 requirements of one of the listed impairments, Listing 12.03. (Pl.'s Br. at 20-22.) Listing
24 12.03 is for "Schizophrenic, paranoid and other psychotic disorders" and provides that a
25 plaintiff must meet specific requirements supported by medical documentation. *See* App.
26 1 to Subpart P of 20 C.F.R. Part 404. Plaintiff argues that the medical evidence supports a
27 conclusion that he has a "poverty of content of speech" associated with "flat affect," and
28 the ALJ erred when he failed to consider this evidence in combination with Plaintiff's

1 restrictions in maintaining concentration, persistence, or pace and his episodes of
 2 decompensation. (Pl.'s Br. at 21-22; Reply at 4-5.)

3 As Defendant argues (Def.'s Br. at 7-12), in the absence of a “medically
 4 documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of
 5 at least 2 years’ duration” under Listing 12.03 paragraph C—a finding that the record
 6 would not support—Listing 12.03 paragraph B criteria require that a plaintiff must have a
 7 record of marked difficulties in the activities of daily living; maintaining social
 8 functioning; maintaining concentration, persistence, or pace; or repeated episodes of
 9 decompensation, each of extended duration. Without meeting one of these paragraph B
 10 requirements, it is not dispositive that a plaintiff has a record of poverty of speech
 11 associated with flat affect under Listing 12.03 paragraph A.

12 The ALJ concluded that Plaintiff has only mild restrictions in the activities of
 13 daily living and social functioning (R. at 34)—a conclusion that Plaintiff does not
 14 specifically contest—and the Court finds that those conclusions are supported by
 15 substantial evidence in the record. As for Plaintiff’s ability to maintain concentration,
 16 persistence, or pace, the ALJ concluded that Plaintiff has moderate—not marked—
 17 difficulties. (R. at 34.) While Plaintiff disputes this conclusion (Reply at 5), the Court
 18 finds that it is also supported by substantial evidence in the record. Specifically, the ALJ
 19 noted medical opinions finding that Plaintiff has a history of drug, alcohol and tobacco
 20 dependence and has frequently abused pain medications and alcohol, among other drugs.
 21 (R. at 33-38.) The ALJ cited the opinions of state agency psychological consultants that
 22 Plaintiff suffers from anxiety but, absent his substance abuse, Plaintiff has only mild to
 23 moderate difficulties maintaining concentration, persistence, and pace. (R. at 34, 39, 226,
 24 1383.) Plaintiff has not challenged the reliability of that evidence or the ALJ’s
 25 consideration of it, and the Court finds that it supports the ALJ’s conclusions.

26 Plaintiff also disputes the ALJ’s conclusion that Plaintiff has experienced no
 27 episodes of decompensation, each of extended duration. (Reply at 4.) Specifically,
 28 Plaintiff asks the Court to consider Plaintiff’s 24 visits to the hospital between 2003 and

1 2011 as episodes of decompensation. (Reply at 4.) However, as the ALJ notes in his
2 decision (R. at 33-39) and Defendant points out in its brief (Def.'s Br. at 9-10), Plaintiff
3 was not admitted in half of those hospital visits, three visits were for the purpose of
4 attempting to refill prescriptions, and one visit was for physical injuries. (R. at 441-58,
5 818-27, 867-68, 918-19, 929-30, 940-41, 978-97, 1048-51, 1101-02, 1149-52, 1190-92.)
6 Only one psychiatric hospitalization lasted more than two weeks, in 2004 (R. at 506)—
7 eight years before the alleged onset date. The Court finds that substantial evidence in the
8 record supports the ALJ's conclusion that Plaintiff has not experienced the requisite
9 episodes of decompensation, each of extended duration, to meet the criteria of Listing
10 12.03 paragraph B. Because the medical evidence does not support a finding that Listing
11 12.03 paragraph B criteria are met, the ALJ did not err in declining to find Plaintiff
12 disabled under Listing 12.03.

13 **C. Plaintiff's Age**

14 Finally, Plaintiff argues that the ALJ erred by not applying Medical-Vocational (or
15 "GRID") Rule 201.14—which considers a claimant of advancing age—in his analysis,
16 essentially arguing that the ALJ improperly failed to consider Plaintiff's age of nearly 50
17 years old in assessing Plaintiff's ability to work in the national economy. (Pl.'s Br. at 22-
18 23 (citing Rule 201.14 in App. 2 to Subpart P of 20 C.F.R. Part 404).) As the Court noted
19 above, the ALJ specifically tailored the hypotheticals he posed to the VE to account for
20 Plaintiff's RFC as well as his prior work experience and advancing age. The Court also
21 already noted that the objective medical record supports the RFC applied, and that
22 conclusion does not change by weighing the assessment of Dr. Chad Hartley—which
23 Plaintiff submitted to the Appeals Council over a year after the date of the ALJ's decision
24 (and three years after the alleged onset date)—against Plaintiff's treatment records and
25 the other objective medical evidence. As noted above, the VE considered Plaintiff's age
26 and prior work experience in concluding that Plaintiff is capable of performing jobs in the
27 national economy. Because the ALJ's hypotheticals were specifically tailored to
28

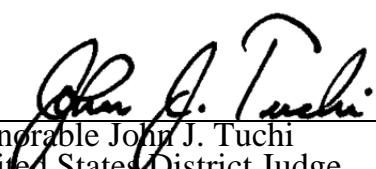
1 Plaintiff's capacity and attributes, the ALJ did not err in declining to reference Rule
2 201.14.

3 Plaintiff raises no materially harmful error on the part of the ALJ, and the Court
4 must therefore affirm the SSA's decision denying Plaintiff's Application for SSI benefits
5 under the Act.

6 **IT IS THEREFORE ORDERED** affirming the May 2, 2014, decision of the
7 Administrative Law Judge, (R. at 31-40), as upheld by the Appeals Council on
8 October 26, 2015 (R. at 1-4).

9 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment
10 accordingly and close this matter.

11 Dated this 29th day of March, 2017.

12 
13 Honorable John J. Tuchi
14 United States District Judge